March 25, 2002

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 98-147: Deployment of Wireline Service Offering Advanced Telecommunications Capability

Dear Ms. Carey:

This letter is being submitted on behalf of the Association of Communications Enterprises ("ASCENT") in response to *Public Notice*, DA 02-506, released March 4, 2002 ("*Notice*"). In the *Notice,* the Wireline Competition Bureau ("Bureau") seeks public comment on the request by Verizon that the Bureau clarify that Section 51.323(k)(2) of the Commission's Rules, 47 C.F.R. § 47 C.R.R. 51.323(k)(2), "does not preclude an incumbent LEC from installing a point of termination bay (POT bay) at the point where an incumbent LEC's facilities terminate and collocator's facilities begin."[1] ASCENT submits that Section 51.323(k)(2) cannot be so read. Accordingly, if the Commission were to desire to allow incumbent local exchange carriers ("LECs") to compel the use of POT bays -- which ASCENT does not believe it should --, Section 51.323(k)(2) would have to be revised and such a revision could only be effected following notice and comment rulemaking.

Verizon concedes, as it must, that Section 51.323(k)(2) prohibits incumbent LECs from "requir[ing] competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible."[2] Verizon's argues, however, that a POT bay "constitutes a point of direct connection to Verizon's network," and that, therefore, "neither Section 51.323(k)(2) nor any other rule prohibits a carrier from requiring POT bays for collocation."[3]

[1] Notice, DA 02-506 at 1.

[2] Letter from W. Scott Randolph, Director, Regulatory Affairs, to Magalie R. Salas, Secretary, Federal Communications Commission, submitted in CC Docket Nos. 96-98 and 98-147 on December 19, 2001, at pg. 2. ("Verizon Letter").

[3] Id.

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As described by Verizon in its CLEC handbook, a POT bay is "an intermediate distributing frame."[4] As such, it replicates functions performed by Verizon's main distribution frame, and is therefore no less an "intermediate interconnection arrangement" than any other intermediate distributing frame. The Commission effectively so held when it cited directly and exclusively to comments opposing mandatory use of POT bays in declaring that "incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible."[5] And Verizon effectively conceded as much when it acknowledged that "an intermediate distribution frame placed between the POT bay and the main distributing frame which is not needed for connection to unbundled elements at the main distributing fame" is prohibited by Section 51.323(k)(2).[6]

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[4] Verizon CLEC Handbooks, Volume 1, Glossary of Telecom Terms (available at www.Verizon,com).

[5] Deployment of Wireline Service Offering Advanced Telecommunications Capability (First Report and Order), 14 FCC Rcd. 4761, ¶ 42, fn. 104 (1999) (*citing, e.g.,* Comments of AT&T Corp. advocating abolition of "ILEC 'POT bay' requirements" (pg. 82), and Reply Comments of Sprint Corporation arguing that "ILECs should not be allowed to require the use of Point of Termination ('POT') bays" (pg. 34). *See also* Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Pennsylvania (Memorandum Opinion and Order), CC Docket No. 01-138, FCC 01-269, ¶ 103, fn. 353 (2001) (*subsequent history omitted*); BellSouth Telecommunications, Inc., Docket Nos. 981834, 990321-TP PSC-00-0941-FOF-TP (Florida Public Service Comm'n, May 11, 2000) ("FCC prohibits ILECs from requiring POT bays or other intermediate points of termination").

[6] Reply Comments of Verizon, filed in CC Docket No. 98-147 on November 14, 2000, at pg.

Verizon's reliance upon the Commission's past characterization of a POT bay "as the point of interconnection between the two carriers' networks" is misplaced to the extent that the carrier cites this declaration as evidence that the Commission has held connection through a POT bay to constitute a form of direct network interconnection.[7] The physical demarcation point between two networks may be at either a main distribution frame or an intermediate distribution frame. The former is a direct connection, while the latter reflects an intermediate connection arrangement. Both, however, are points of physical network interconnection.

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[7] Verizon Letter at 2.

The reasons for which the Commission first declined to allow incumbent LECs to compel the use of POT bays when not technically necessary remain valid today. Other than apparently asisting Verizon in "meeting its merger conditions,"[8] POT bays are unnecessary pieces of equipment that increase interconnectors' costs and consume precious collocation space. Moreover, POT bays introduce yet another point of trouble in the network. These matters, however, can be addressed if and when the Commission addresses any proposed changes to Section 51.323(k)(2) in a notice and comment rulemaking proceeding.[9]

By reason of the foregoing, the Association of Communications Enterprises urges the Bureau to deny Verizon's request that Section 51.323(k)(2) be "clarified" to allow incumbent LECs to require the use of POT bays, or for that matter, any other intermediate interconnection arrangement.

Respectfully submitted,

Charles C. Hunter
General Counsel
Association of Communications Enterprises

cc: W. Scott Randolph

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[8] Id. at 1.

[9] It is well settled that an agency may not constructively rewrite a rule by reinterpreting it. National Family Planning and Reproductive Health Association, Inc. et al. v Sullivan, 979 F.2d 227, 231 (D.C. Cir., 1992). Sanctioning such conduct would "render the requirements of [Section] 553 basically superfluous in legislative rulemaking by permitting agencies to alter their requirements for affected public members at will through the ingenious device of 'reinterpreting' their own rule." Id. "[T]he procedural guarantees of notice and comment . . . would not be meaningful if an agency could effectively, constructively amend regulations by means of nonobvious readings without giving the affected parties an opportunity either to affect the content of the regulations at issue or at least to be aware of the scope of their demands." Secretary of Labor v. Western Fuels-Utah, Inc., 900 F.2d 318, 327 (D.C. Cir., 1990).